

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	4:12-cr-503
	§	(Hon. Lee H. Rosenthal)
JASON DANIEL GANDY	§	

GANDY’S RULE 29(c) MOTION FOR JUDGMENT OF ACQUITTAL

COMES NOW JASON DANIEL GANDY, through counsel Sean Buckley, and files this his Rule 29(c) Motion for Judgment of Acquittal, showing the Honorable Court as follows:

1. Gandy re-asserts all grounds for Rule 29 relief previously raised under his Rule 29(a) and (b) motions.

At the close of the Government’s case, and then again after resting his own defense, Gandy moved for judgment of acquittal on all counts under Rule 29(a) and (b), respectively. Gandy hereby re-asserts all grounds and arguments previously made in those Motions in support of a Judgment of Acquittal as to all counts.

2. Gandy moves for Judgement of Acquittal as to Count 1.

Count 1 charged Jason Gandy with transporting a minor with intent that the minor engage in criminal sexual activity. The Government was required to prove the following elements:

First: That Mr. Gandy knowingly transported Minor Victim #1;

Second: That Minor Victim #1 was under 18 years of age at the time;

Third: That Mr. Gandy intended Minor Victim #1 to engage in prostitution or other criminal sexual activity; and

Fourth: that the transportation was in interstate or foreign commerce.

Gandy hereby asserts that the Government failed to prove the third element, that Mr. Gandy intended Minor Victim #1 to engage in prostitution or other criminal sexual activity. The Government's proof failed as to this element for the following reasons: (1) the Government failed to prove the law(s) of the U.K. that would define the subject conduct as (a) criminal prostitution, or (b) other criminal sexual activity; and (2) the Government failed to offer any evidence of Gandy's knowledge that particular conduct was defined as criminal prostitution or was otherwise unlawful in the U.K., or any factual basis for the conclusion that Gandy was imputed knowledge of U.K. law—especially at any time prior to his presence in the U.K.

The Court should acquit Gandy of Count 1.

3. Gandy moves for Judgment of Acquittal as to Count 2.

Count 2 charged Jason Gandy with producing child pornography or attempting to do so. The Government was required to prove the following elements as to attempt:

First: That Mr. Gandy intended to employ, use, persuade, induce, entice, or coerce Minor Victim #1 to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct;

Second: That Mr. Gandy engaged in a purposeful act, that under the circumstances, as he believed them to be, amounted to a substantial step toward the commission of that crime and strongly corroborated his criminal intent; and

Third: (A) That the visual depiction would have been transmitted using any means or facility of interstate or foreign commerce; or

(B) That the visual depiction would have been produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce.

To find Mr. Gandy guilty of actually committing this crime, the Government was required to prove the following elements:

First: That Mr. Gandy employed, used, persuaded, induced, enticed, or coerced Minor Victim #1 to engage in sexually explicit conduct;

Second: That Mr. Gandy acted with the purpose of producing a visual depiction of such conduct; and

Third: (A) That the visual depiction was actually transmitted using any means or facility of interstate or foreign commerce; or

(B) that the visual depiction was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce.

Gandy hereby asserts that the Government failed to prove either attempted or actual commission of an offense as to Count 2, because the Government failed to prove that Gandy acted with the purpose of producing a visual depiction of sexually explicit conduct.

The Government failed to introduce any visual evidence of actual production. The Government introduced a photograph ostensibly produced by Gandy of Minor Victim #1 wearing his underwear in the fashion of a loin cloth, but that photograph did not meet the definition of child pornography.

The Government likewise failed to offer sufficient evidence of an attempt to produce a visual depiction of sexually explicit conduct. Undersigned recalls trial testimony from Minor Victim #1 that he was laying face-down on a massage table and saw a “flash,” presumably from Gandy’s cell phone camera. This testimony did not establish production or attempted production, since there was no evidence that Minor Victim #1’s genitals were exposed as he laid face-down, that he was otherwise engaging in sexually explicit conduct,

or that Gandy was even aiming his cell phone in Minor Victim #1's direction at the time of the flash.

Undersigned recalls additional trial testimony from Minor Victim #1 that he rose up from the massage table after seeing the flash and saw Gandy aiming Gandy's cell phone in his direction. Upon undersigned's best recollection, the Government failed to offer evidence that Gandy's cell phone was aimed to capture Minor Victim #1's genitals, that Minor Victim #1 was engaging in sexually explicit conduct by standing up from the massage table, or that Gandy actually produced child pornography during this incident.

The Court should acquit Gandy of Count 2.

4. Gandy moves for Judgment of Acquittal as to Count 3.

Count 3 charged Gandy with transporting or shipping child pornography. The Government was required to prove the following elements:

First: That Mr. Gandy knowingly transported by any means or facility of interstate or foreign commerce, an item or items of child pornography, as alleged in the indictment; and

Second: That when Mr. Gandy transported the item[s], Mr. Gandy knew the items were child pornography.

Gandy hereby asserts that the Government failed to prove that Mr. Gandy knew the transported item(s) were child pornography. The transported images involved nude photographs of adults and children portrayed as members of a nudist community. While the images may well constitute child pornography upon application of the *Dost* factors, the Government provided no evidence that Gandy knew or believed the images constituted child pornography. The Court should acquit Gandy of Count 3.

5. Gandy Moves for Judgment of Acquittal as to Count 6.

Count 6 charged Gandy with sex trafficking of a minor (Minor Victim #3). The Government was required to prove the following elements:

First: That Mr. Gandy knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained by any means Minor Victim #3;

Second: That Mr. Gandy committed such act knowing or in reckless disregard of the fact that Minor Victim #3 had not reached the age of 18 years and would be caused to engage in a commercial sex act;

Third: That Mr. Gandy's acts were in or affected by interstate or foreign commerce.

Gandy hereby asserts that the Government failed to prove that Minor Victim #3 was caused to engage in a commercial sex act, or engaged in a commercial sex act in any event. Minor Victim #3, "Mr. D," testified that he rubbed a man's leg and then left the massage room. Rubbing a man's leg in a massage room—or anywhere else—is not a commercial sex act. The Court should acquit Gandy of Count 6.

6. Conclusion and Request for Relief.

Defendant Jason Gandy moves for a Judgment of Acquittal pursuant to Rule 29(c), Federal Rules of Criminal Procedure, as requested above.

Respectfully submitted,

/s/ Sean Buckley
Sean Buckley
State Bar No. 24006675
770 South Post Oak Lane, Ste. 620
Houston, Texas 77056
TEL: 713-380-1220
FAX: 713-552-0746
Email: buckleyfirm@gmail.com

Certificate of Service

I certify that I provided a copy of this Rule 29(c) Motion for Judgment of Acquittal to Assistant United States Attorney Sherri Zack and all parties via the ECF system on this the 21st day of August, 2018.

/s/ Sean Buckley
Sean Buckley